

BOARD OF PAROLE HEARINGS

Executive Board Meeting

Monday, January 14, 2013

CLOSED SESSION

(All times are approximate and subject to change.)

1515 K Street
Executive Board Meeting Room
Suite 550
Sacramento, California 95814

NOTE START TIME: 2:00 p.m.

AGENDA

1. Risk Assessments
Howard E. Moseley, Chief Counsel
Dr. Clifford Kusaj, Chief, Forensic Assessment Division
[Johnson vs. Shaffer, Case Number 2:12-cv-01059-CCH P]
2. Lifer Scheduling and Tracking System (LSTS) Hands-on training
Howard E. Moseley, Chief Counsel

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Tuesday, January 15, 2013
CLOSED SESSION
(All times are approximate and subject to change.)

1515 K Street
Executive Board Meeting Room
Suite 550
Sacramento, California 95814

NOTE START TIME: 9:00 a.m.

DISCUSSION

Overview of Pending Litigation and Writs of Habeas Corpus

Pursuant to Government Code section 11126(e)(1)

(A board may meet in closed session to confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.)

Discussion

1. *In re Vicks* (2011) 195 Cal.App.4th 475, review granted July 20, 2011, S194129.
2. *Montgomery* (2012) 208 Cal.App.4th 149.

For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.

BOARD OF PAROLE HEARINGS
Executive Board Meeting
http://www.cdcr.ca.gov/BOPH/meeting_agenda.html
Tuesday, January 15, 2013

OPEN SESSION
(All times are approximate and subject to change.)

1515 K Street
Executive Board Meeting Room
Suite 550
Sacramento, California 95814

NOTE START TIME: 10:00 a.m.

AGENDA

MEETING CALLED TO ORDER

CONSENT CALENDAR

1. Roll Call
2. Comments and Clarification regarding Board of Parole Hearings (BPH) Meeting Minutes: December 11, 2012
3. BPH Lifer Hearing Backlog Report
4. Public Comment on Consent Calendar – Comments are limited to five minutes. Items on the consent calendar are considered routine and non-controversial. All matters are approved by one motion unless pulled by a Board Member for discussion or separate action.

REPORTS

5. Report from Executive Officer
 - *E-mail Address established for Written Comments - BPHEXE.BRDMEETING@cdcr.ca.gov*
6. Report from Chief Counsel
 - *Statutory Guidelines regarding Parole Hearing Decision Splits*

OPEN COMMENTS

7. BPH Commissioners - Agenda Items for Future Meetings
8. Public Comment – Comments are limited to five minutes. The public may comment on any item related to Board business. The Board will not consider comments about future parole hearings. Those comments should be sent to the prison where the inmate is housed so that they can be considered by the panel assigned to the case.

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EN BANC HEARINGS

9. Referral pursuant to Penal Code section 1170(e) to determine eligibility for recommendation to sentencing court for recall of sentence. Members of the public may address the Board for a period not to exceed five (5) minutes.

A. REYES, Russell **K-87002**
 County of Commitment:
 Orange

10. Referral by the Chief Counsel pursuant to California Code of Regulations, Title 15, section 2042, to assure complete, accurate, consistent and uniform decisions and the furtherance of public safety. Members of the public may address the Board for a period not to exceed five (5) minutes.

B. GUTIERREZ, Doreen **W-82022** **Referred by Decision Review**
 County of Commitment:
 Los Angeles (error of law)

C. PERROTTE, Jeffery **H-89472** **Referred by Decision Review**
 County of Commitment:
 Riverside (error of law)

D. PETERSON, Robert **B-85767** **Referred by Decision Review**
 County of Commitment:
 Sacramento (error of fact)

E. VIRGIL, Glenda **W-27823** **Referred by Decision Review**
 County of Commitment:
 San Diego (new information)

11. Referral by the Governor pursuant to Penal Code section 3041.1 and California Code of Regulations, Title 15, section 2044 to request review of a parole decision by the full board. Members of the public may address the Board for a period not to exceed five (5) minutes.

F. BENNETT, Tony **H-10932**
 County of Commitment:
 Los Angeles

G. WILLIAMS, Victor **B-52321**
 County of Commitment:
 Madera

12. Referral by the Governor pursuant to Penal Code section 4802 to review a pardon application. Members of the public may address the Board for a period not to exceed five (5) minutes.

H. BLACK II, Theodore

I. JASTER, Jeffery

J. LIVINGSTON, Richard

K. MEDINA, Alejandro

13. Referral pursuant to Penal Code section 3041 to either grant or deny parole when there is a tie vote.

L. ANDERS, Sheila **W-14543**
County of Commitment:
Riverside

The decision in the above hearings will be posted no later than 4 p.m. in the lobby on the ground floor of 1515 K Street and also on the BPH internet page at the following address:
www.cdcr.ca.gov/BOPH/enbanc.html.

CLOSED SESSION – EN BANC CASES

Pursuant to Government Code section 11126(c)(4)

("...[N]or shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion nor consideration is expressly prohibited by statute.")

ADJOURNMENT

BOARD OF PAROLE HEARINGS
Best Practices Advisory Committee Meeting
Tuesday, January 15, 2013
OPEN SESSION
(All times are approximate and subject to change.)

1515 K Street
Executive Board Room
Suite 550
Sacramento, California 95814

NOTE START TIME: **1:30 p.m.**

Best Practices Advisory Committee: The scope of this committee is to identify best administrative processes, hearing practices, and decision review processes and to establish methods for providing meaningful feedback to commissioners concerning hearing practices and decisions. Members of this committee are commissioners Ferguson, Fritz, Labahn, Peck and Zarrinam.

AGENDA

MEETING CALLED TO ORDER

CONSENT CALENDAR

1. Roll Call
2. Comments and Clarification regarding Best Practices Advisory Committee Meeting Minutes: December 10, 2012
3. Public Comment - Items on the consent calendar are considered routine and non-controversial. All matters are approved by one motion unless pulled by a Board Member for discussion or separate action. At this time, any member of the public may ask the Board to be heard on any item on the consent calendar.

REPORTS

4. Report from Executive Officer
5. Report from Chief Counsel
 - *Survey Results*, presented by Kara Houston, Staff Counsel
 - *Case Compendium Project*, presented by Kara Houston, Staff Counsel
 - *Administrative Directives versus Legal Guidelines*, presented by Howard Moseley, Chief Counsel
6. Report from Chairperson
 - *Benchguide Project*, presented by Cynthia Fritz, Commissioner; John Peck, Commissioner

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DISCUSSION ITEMS

7. a) Administrative Directive on Parole Hearing Decision Splits, presented by Kara Houston, Staff Counsel
b) Board Questions and Comments
c) Public Comments
d) Motion and Votes

OPEN COMMENTS

8. BPH Commissioners - Agenda Items for Future Meetings
9. Open Comment - Public comments on discussion items are limited to five minutes.

ADJOURNMENT

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BOARD OF PAROLE HEARINGS

Executive Board Meeting

December 11, 2012

Meeting called to order at 10:06 a.m.

CONSENT CALENDAR

Roll Call

Present: Anderson, Arthur Jr.; Ferguson, Jeffrey; Figueroa, Dan; Fritz, Cynthia; Garner, Jack; Labahn, Peter; Montes, Marisela; Peck, John; Singh, Amarik; Roberts, Brian; Turner, Terri; and Zarrinnam, Ali

Absent: None

Comments and Clarification regarding Board of Parole Hearings (BPH) Meeting Minutes: November 14, 2012

There were no comments.

BPH Lifer Hearing Backlog Report

Executive Officer, JENNIFER SHAFFER stated that the backlog report for the previous month will now be attached to the agenda ten-days prior to each executive meeting. SHAFFER reported the backlog is tentatively 34 hearings.

Public Comments on Consent Calendar

There were no public comments.

Commissioner TERRI TURNER made a motion to approve the consent calendar, which was seconded by Commissioner BRIAN ROBERTS. The consent calendar was unanimously approved.

REPORTS

Report from the Executive Officer

SHAFFER reported that next week the special master will publish his report on CDCR's compliance under *Valdivia*. She added that CDCR is working to finalize the layoff plan, which will continue for six to eight months.

Report from Chief Counsel

Notification of Action by Governor

HOWARD E. MOSELEY, Chief Counsel, announced the legal unit's new process, effective January 1, 2013, to notify the inmate's attorney, victim services, and the respective district attorney regarding the Governor's decision on lifer parole hearings.

SHAFFER questioned if this process only pertains to parole grants. MOSELEY indicated that this applies to all grants, and could occasionally apply to denials.

Public Comments on Reports

Criminal defense attorney, KEITH WATTLEY, indicated that there are problems with the current notification process and described a situation involving one of his clients. He asked the Board to clarify the process by January.

DISCUSSION ITEMS

Administrative Directive regarding Continuances

KARA HOUSTON, Staff Counsel, read the administrative directive regarding continuances and advised the Board that the content was approved by the Best Practices Committee the day before.

Motion made by Commissioner JOHN PECK to adopt Administrative Directive 2012-03 and seconded by Commissioner ROBERTS. The motion passed unanimously.

OPEN COMMENTS

BPH Commissioners – Agenda Items for Future Meetings

There were no agenda items set forth for future meetings.

Public Comments

VANESSA NELSON, of Lifer Support Alliance, informed the Board that she has been surveying inmates regarding attorney performance and will continue to do so with the intent to present her findings to the Board.

EN BANC HEARINGS

Recall and Referral for Resentencing: *Penal code section 1170(e)* cases

GUERRA, Guadalupe **T-33811**

STEPHANIE DeLaCRUZ, Guerra's daughter, supported release.

CARMEN GUERRA, the inmate's wife supported release.

JOSEPH PAUL GUERRA, the inmate's son, spoke in favor of release.

Decision Review – California Code of Regulations, title 15, section 2042

CORBY, Sargent [sic] **T-33811**

There were no public comments.

MARTIN, JOHN **J-87352**

JACK WADDELL, Deputy District Attorney of Contra Costa County, spoke in opposition to parole.

En Banc Referral– California Code of Regulations, title 15, section 2044(a):

GILMORE, CHRISTOPHER D-75500

EVAN GREENBERG, spoke on behalf of the inmate's attorney, and supported parole.

ALEXIS de la GARZA, from the Los Angeles County District Attorney Office opposed parole.

Governor's Referrals – Penal Code section 3041.1

MCLENDAN, ANDRE [sic] V-41437

BREANNE BELL, the inmate's niece, supported parole.

KEISHA MCLENDON, the inmate's wife, supported parole.

The inmate's attorney, KEITH WATTLEY, supported parole.

JILL KLINGE, from the Alameda County District Attorney's Office, opposed parole.

CHRISTINE WARD, a victim's advocate, read a letter on behalf of the victim's mother. The letter expressed concerns as to whether the inmate has changed, whether he minimizes the crime, and noted that he has never admitted to the crime.

THOMPkins, RAY E-99962

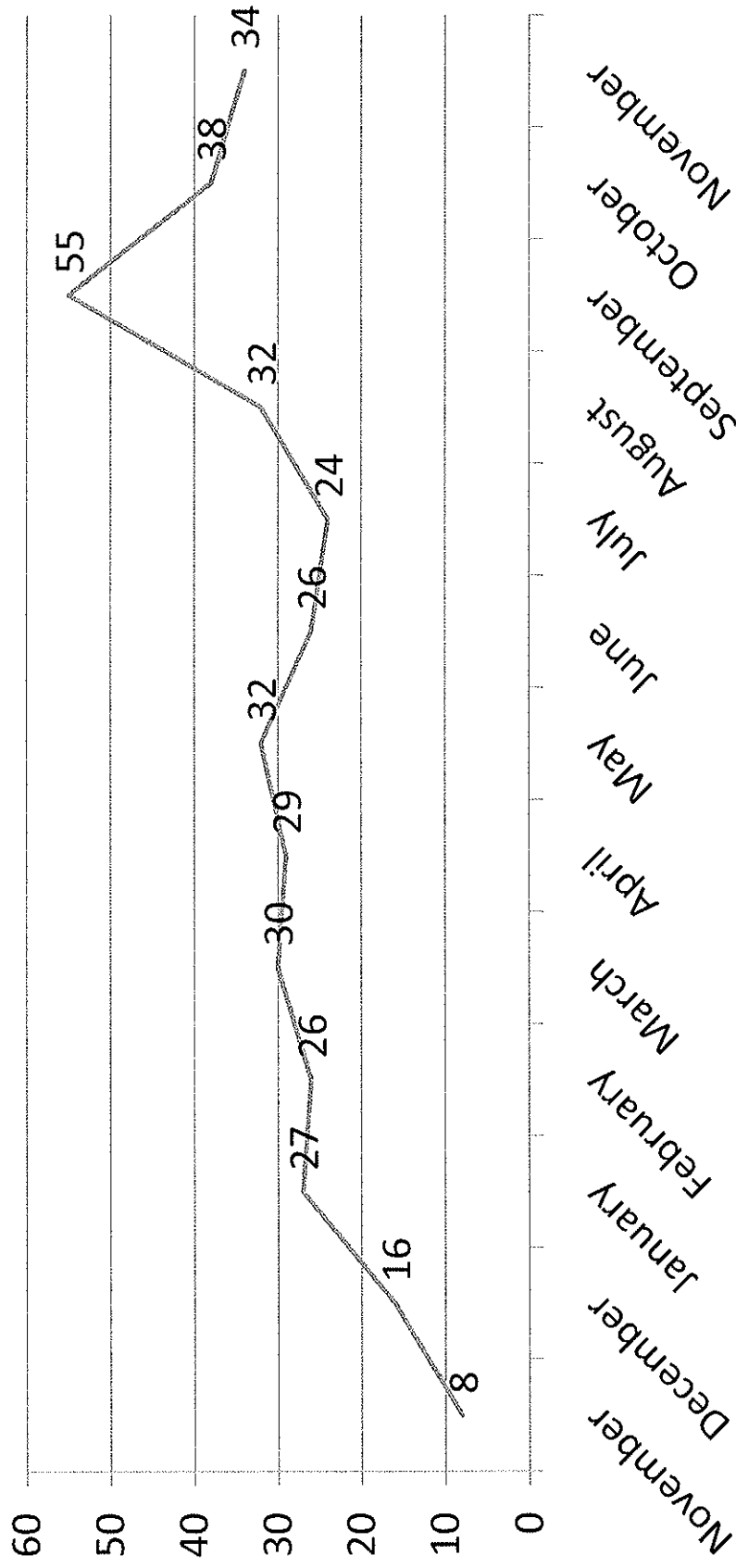
KLINGE opposed parole.

Meeting adjourned at 11:11 a.m.

BPH: PC 3041(d) Report

("Backlog" Report)

Nov, 2011 – Nov, 2012



BOARD OF PAROLE HEARINGS
Best Practices Advisory Committee Meeting
December 10, 2012

Meeting called to order at 3:00 p.m.

CONSENT CALENDAR

Roll Call

Present: Ferguson, Jeffrey; Fritz, Cynthia; LaBahn, Peter; Peck, John; Zarrinnam, Ali

Absent: None

Comments and Clarification regarding Best Practices Advisory Committee Meeting

Minutes: October 16, 2012

There were no comments.

Commissioner PETE LABAHN made a motion to approve the consent calendar, which was seconded by Commissioner JOHN PECK. The consent calendar was unanimously approved.

REPORTS

Report from Executive Officer

Executive Officer, JENNIFER SHAFFER, stated that there is no executive officer report this month.

Report from Chief Counsel

Staff Counsel, KARA HOUSTON, did an overview on Committee Goals for the Best Practices Committee.

DISCUSSION ITEMS

Administrative Directive regarding Hearing Continuances, presented by Kara Houston, Staff Counsel

HOUSTON reported on the Administrative Directive regarding Hearing Continuances. Commissioner TERRI TURNER asked whether the previous transcript can be relied upon. MOSELEY answered that the previous transcript could be reviewed as it is part of the record and taken under oath. There were no additional questions.

Public Comments on Administrative Directive

VANESSA NELSON from Lifer Support Alliance stated that she was concerned scheduling issues might result in inconsistent application of the Administrative Directive.

Commissioner ALI ZARRINNAM made a motion to approve the Administrative Directive, which was seconded by Commissioner PECK. The Administrative Directive was unanimously approved and sent to the full Board for approval.

OPEN COMMENTS

Agenda Items for Future Meetings

Mini-Manual:

ZARRINNAM requested that a list of numbers for all institutions and District Attorneys be added to the mini-manual. SHAFFER indicated that there is a list maintained by the scheduling unit.

Survey:

FRITZ discussed creating a survey that would be filled out by the commissioners and deputy commissioners of what types of issues each panel member handled during the hearing. Guidelines will be created from the survey.

Squawk Boxes:

PECK stated that the issue of squawk boxes being turned on during deliberations of parole suitability hearings should be addressed. SHAFFER stated that she would reach out to Department of Adult Institutions to discuss concerns.

Additional topics for next meeting:

1. Outline of bench guide
2. Update on Case Compendium
3. Update on Mini-Manual
4. Report on Documentation and Progress Hearings for the bench guide and delegation of different types of hearings to be added to the bench guide will be given to best practices committee members.

Open Comment

Commissioner BRIAN ROBERTS stated that he would like the training committee to work with the best practices committee to make forms available on the internet/intranet to create consistency in panel processes. ROBERTS added that he does not want the mini-manual deleted from the internet.

Meeting adjourned at 4:10 p.m.



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-01

SUBJECT: PROCEDURES TO RESOLVE A TIE VOTE AT A PAROLE SUITABILITY HEARING

INTRODUCTION

This Administrative Directive clarifies the procedures to follow in order to resolve a tie vote regarding the determination of suitability, fixing a parole date or scheduling the next hearing.

LEGAL AUTHORITY

Penal Code section 3041(a) provides, "In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e)."

Penal Code section 3041(e) provides, "For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review."

DIRECTIVE

In the event a hearing of a tie vote regarding the determination of suitability, fixing of a parole date or scheduling of the next hearing, the matter shall be referred to the full board en banc for a final decision. The commissioners conducting the review shall only consider the record of the hearing and all materials considered by the original panel. By statute, commissioners may not consider any new evidence (including comments or letters) submitted after the hearing. Therefore, no additional public comments or written materials will be considered by the Board when resolving the tie vote.

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.

APPROVED BY:

JENNIFER P. SHAFFER
Executive Officer, BPH

DATE: